



# Commonwealth of Massachusetts State Ethics Commission

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## **CONFLICT OF INTEREST OPINION EC-COI--06-5\***

### **INTRODUCTION**

The Department of Mental Retardation ("DMR") provides residential services to mentally retarded individuals in state-operated facilities, and it also contracts with outside vendors to provide residential services for persons with mental retardation. By regulation, DMR has established several processes to safeguard the human rights of individuals served by DMR. Every provider of residential, day or site-based residential services and every specialized home care placement agency, including state-operated facilities, is required to have a Human Rights Committee.

### **QUESTION**

For purposes of the conflict-of-interest law, are Human Rights Committees for DMR's state-operated programs state agencies, and are their members "special state employees"?

### **ANSWER**

Yes, Human Rights Committees for DMR's state-operated facilities are state agencies, and their members are special state employees. This conclusion also applies to Human Rights Committees for private providers.

### **FACTS**

DMR has supervision of public and private facilities for mentally retarded persons in the Commonwealth of Massachusetts. It operates its own residential facilities for mentally retarded individuals and has authority to contract with private agencies, non-profit charitable corporations, partnerships and collaboratives to provide residential and day care services to mentally retarded individuals.<sup>1</sup> To fulfill its purposes, DMR has authority to adopt rules and regulations, and is charged with establishing "procedures and the highest practicable professional standards for the reception, examination, treatment, restraint, transfer and discharge of mentally retarded persons in departmental facilities."<sup>2</sup>

The commissioner of DMR has the mandate to "ensure citizen, consumer and family participation, through the appointment of mental retardation citizens' advisory committees and other appropriate methods, in the oversight of mental retardation services" at all geographical levels, including the local level.<sup>3</sup>

The General Laws impose requirements regarding treatment of mentally retarded individuals, including restrictions on use of restraints, and mandate that mentally retarded persons under DMR's care shall have certain specified legal and civil rights "and any other rights guaranteed by law" or "specified in the regulations of the department."<sup>4</sup> DMR has promulgated regulations entitled "Standards to Promote Dignity" ("Standards") which articulate principles and rights to further its "goal of promoting the welfare and dignity of all persons with

mental retardation.”<sup>5</sup> The Standards apply to “all providers and to all services or supports which are operated, certified, licensed or contracted for or otherwise funded by [DMR].”<sup>6</sup>

To implement its goal, DMR has established a comprehensive human rights safeguard system. This includes Human Rights Committees (“HRCs”) that monitor human rights compliance by each provider or agency, and a human rights coordinator to do administrative work for each HRC.

### Human Rights Committees

DMR created HRCs by regulation on February 9, 1978, at a time when advocacy had led to international recognition of the rights of persons with mental disabilities.<sup>7</sup> No statute required that HRCs be created; DMR required them voluntarily.

By regulation, the head of every provider and specialized home care placement agency subject to DMR’s Standards is required to appoint and empower an HRC.<sup>8</sup> Whether a provider is state-operated or private, its Executive Director selects the members of its HRC and also can remove members from the HRC. Consequently, at state-operated facilities, HRC members are appointed and can be removed by a DMR employee. Most HRCs have by-laws containing criteria for selection and removal of a member.

HRCs are required to have at least five members, at least three of whom must be individuals receiving services or supports provided, purchased or arranged by DMR, or parents, guardians or advocates for such individuals. Members also must include a physician or nurse, a psychological or masters level practitioner with expertise in mental retardation and developmental disabilities, mental illness or applied behavioral analysis, and an attorney, law student or paralegal with relevant expertise. With regard to conflict of interest concerns, the regulations provide only as follows: “no member may have a direct or indirect financial interest or administrative interest in the provider; and, where [DMR] is not a provider, not more than one of the members shall have any direct or indirect financial or administrative interest in [DMR].”<sup>9</sup> HRC members serve on a volunteer basis without pay, and they do not receive or spend DMR funds.

The HRCs are required to meet at least quarterly, but as often as necessary upon the call of its chairperson or two of its members. By regulation, the members choose their own chairperson and designate their own subcommittees, and they develop operating rules and procedures as they deem necessary to accomplish the purposes assigned them by regulation.

Each HRC is required to keep minutes of its meetings. DMR’s Office for Human Rights provides HRCs with a suggested format and guidelines for keeping minutes. An HRC is required by regulation to file duplicates of its minutes with a DMR area office director and a Human Rights Specialist assigned to it by DMR’s Office for Human Rights. Human Rights Specialists and the State Director of Human Rights provide training and consultation to the HRCs. The Office for Human Rights may act as a liaison between the committee and the area. An HRC may request that the Human Rights Specialist advocate for an individual or an issue within DMR or a provider agency.

Among the specific responsibilities of the HRCs is to monitor and review the authorization and use of behavior modification interventions proposed for individuals served by the provider or agency. In regulations regarding behavior modification, DMR states a policy that “in individual cases the only procedures which may be used are those which have been

determined to be the least restrictive or least intrusive alternatives.”<sup>10</sup> Use of extraordinary behavior modification procedures is authorized in exceptional cases, but may be implemented “only after a rigorous review and approval by clinicians, human rights committees, and [DMR].”<sup>11</sup> DMR establishes a three-level classification of increasingly restrictive or intrusive behavior modification procedures and requires a written plan for any proposed uses of Level II or III interventions. The HRCs review every written plan regarding such interventions and have “authority to approve or disapprove based on compliance or noncompliance with [DMR’s] regulations.”<sup>12</sup>

Providers must send the HRCs certain reports about restraint of minors and monthly reports of all emergency restraints and renewals of such restraints. The HRCs are authorized to gather information about the individuals involved, intervene on their behalf to help develop intervention strategies, and review complaints about restraints or refer them for investigation. HRCs are authorized to have access to individuals’ private records.

The HRCs have a role in DMR investigations of allegations of incidents or conditions alleged to be illegal, dangerous or inhumane, suspicious deaths, and other particular matters affecting the rights of individuals. They find attorneys and interpreters for individuals who have been determined to be unable to communicate without assistance, and otherwise ensure that these individuals’ interests are adequately protected. The HRC for a provider is required to be a party to every complaint involving individuals served by the provider. An HRC may assist an individual in filing a complaint and also may bring a complaint on its own initiative.

In addition, HRCs have the duty to monitor and review the conduct of research at the provider’s program sites to ensure that it has been reviewed and approved by DMR’s Research Review Committee and complies with conditions set by that body. The HRCs monitor and review the means used by DMR to inform and train mentally retarded individuals, staff, guardians, and families about the individuals’ rights. The HRCs annually review DMR’s policies and procedures to ensure compliance with DMR’s regulations on human rights. They recommend improvements in service to the providers, agencies and DMR. They are required to make site visits to locations where services are provided, with or without notice.

## **DISCUSSION**

A state employee is defined under the conflict of interest law, M.G.L. c. 268A, as “a person performing services for or holding an office, position, employment or membership in a state agency.”<sup>13</sup> A state employee who holds a position for which no compensation is provided is a special state employee.<sup>14</sup>

In determining HRC members’ status under the conflict of interest law, the first question is whether HRC members hold “an office, position, employment or membership in a state agency.” A state agency includes “any department of a state government, including the executive, legislative or judicial, and all councils thereof and hereunder, and any division, board, bureau, commission, institution, tribunal or other instrumentality within such department, and any independent state authority, district, commission, instrumentality or agency . . .”<sup>15</sup> Accordingly, we will analyze whether an HRC is an “instrumentality within” DMR or an “independent state instrumentality,” and therefore, a state agency.

To make this determination, we look to the ordinary and approved usage of the language and to the method of formation and operation and the purpose of the HRCs.<sup>16</sup> For our purposes, “instrumentality” has been defined as: (1) “the quality or state of being instrumental: a

condition of serving as an intermediary... (2)(a): something by which an end is achieved: MEANS... (b) something that serves as an intermediary or agent through which one or more functions of a controlling force is carried out: a part, organ or subsidiary branch especially of a governing body.”

In past decisions, this Commission has used a five-part analysis to determine whether a non-profit corporation or other entity with an independent identity and a public role or purpose was a government agency within the meaning of the conflict of interest law, and thus whether a member of the entity was a public employee. The factors in the analysis include:

- (1) the means by which the entity was created (e.g., legislative, administrative or other governmental action);
- (2) the entity’s performance of some essentially governmental function;
- (3) whether the entity receives or expends public funds; and
- (4) the extent of control and supervision of the entity exercised by governmental officials or agencies.<sup>17</sup>

Following a decision by the Supreme Judicial Court, this Commission also considers “the extent to which there are significant private interests involved in the entity under review or whether the state or its political subdivisions have the powers and interests of an owner.”<sup>18</sup> This last factor and the factor concerning receipt or expenditure of public funds are irrelevant to the inquiry here because the HRCs neither receive nor spend public funds and control no assets.

With regard to formation, this Commission in past decisions has found that an entity is governmentally created where it was created by statute, regulation or executive order, where it “performs a legislatively mandated function of the creating agency,” or where there was “any legislative underpinning, even indirect, for the creation of the board.”<sup>19</sup> No legislative mandate specifically requires the creation of HRC committees, but the legislature has required that mentally retarded individuals be ensured certain rights and has given DMR the regulatory authority both to further specify those rights and to implement procedures to protect them. DMR established the purpose, composition, and tasks of the HRCs by regulation. Recognizing the need to enforce its human rights standards, DMR required each provider of services, whether state-operated or private, to have an HRC. Accordingly, we conclude that the HRCs were governmentally created.

In addition, we find that the HRCs serve an essential governmental function rather than a private one. Considerations as to whether an entity serves an essential governmental function include whether its functions are “contemplated by state or federal legislation,” whether its roles are “traditional or exclusive roles of government,” and whether the tasks they perform are “uniquely within the bailiwick of government.”<sup>20</sup> Functions that this Commission has recognized as “classic essential governmental services” include responsibility for police and fire services, municipal infrastructure (water, sewer, drainage, streets) and public school education.<sup>21</sup> The United States Supreme Court has recognized that the state has a legitimate interest under its *parens patriae* powers in providing care to its citizens who, because of emotional or mental disabilities, are unable to care for themselves.<sup>22</sup> The courts have established that, in providing such care, the state has an obligation to ensure a constitutionally adequate level of human rights protection.<sup>23</sup>

The HRCs are a means by which DMR ensures that providers meet this obligation. The HRCs function as mandated human rights oversight and advocacy groups assigned to particular service providers. Their responsibility is to monitor restraint, behavior modification interventions and mistreatment of mentally retarded individuals by state-operated facilities and private providers. In relation to the providers, they act as assigned compliance officers, enforcing DMR standards and regulations. Review or approval by the HRCs of restraint forms and behavior modification plans is part of the procedures DMR requires providers to follow. DMR has given HRC members extraordinary access to the confidential medical records of mentally retarded individuals in order to ensure that they have the information necessary to monitor the quality of providers' treatment.

In implementing processes to protect human rights, DMR recognized the necessity and value of having regular input from monitors not beholden to DMR. The design of the HRCs reflects DMR's awareness that having DMR officials and administrators monitor their own compliance with the Standards of Dignity is like "letting the fox guard the henhouse,"<sup>24</sup> and that it furthers DMR's purposes to be confronted by a dependable watchdog.

The fact that the HRCs may advocate for private individuals and sometimes oppose DMR's actions as a provider does not contradict our conclusion that they serve an essential governmental function. While human rights advocacy is not "an exclusive role of government," and typically is a role taken on by private people or entities in opposition to government, it is consistent with governmental purposes to incorporate advocates into governmental processes in order to protect individuals' rights, particularly where alternatives are not privately available or accessible.<sup>25</sup> Including the HRCs in its system of human rights oversight enables DMR to ensure that human rights standards are reliably maintained for mentally retarded individuals on a case-by-case, incident-by-incident basis. Doing their advocacy work within the processes and structures that DMR has established to protect human rights, the HRCs aid DMR in meeting its fundamental responsibilities and perform an essential government function.

Finally, in considering the extent of governmental control and supervision of an entity, the Commission has looked to the government's authority to appoint members of the entity or set limits on its membership, the presence of governmental employees or officials among the membership,<sup>26</sup> and the extent of governmental direction and instruction of the entity.<sup>27</sup> We also have examined to whom board members owe their primary loyalty.<sup>28</sup> In another context, this Commission has applied the following definition of "supervision": "the act of managing, directing or overseeing persons or projects"<sup>29</sup> or "the act, process or occupation of supervising: direction, inspection and critical evaluation: oversight."<sup>30</sup>

With regard to membership, governmental control over the HRCs is comparatively limited. In each state-operated facility, an Executive Director who is employed by the state chooses the members of its HRC and has the power to remove them. But DMR regulations give the Executive Director little opportunity to exert ongoing influence since the Executive Director does not serve on the HRC and the HRC does not report to the Executive Director. In addition, the regulations prevent the Executive Director from setting up an HRC with any clear allegiance to DMR, thus ensuring that HRC members exercise independent judgment. DMR does not have a member on the committee to state its positions. Where the provider is a state-operated facility, no HRC member may have a financial interest or administrative interest in DMR. At least three members of every HRC must be recipients of DMR's services or supports, or such individuals' parents, guardians or advocates. Because the quality of care directly affects them or their families or clients, these individuals are likely to be among those most critical of any human rights deficiencies on the part of the state-operated programs. The other

HRC members are professionals who are not required to have any particular affiliations. The membership requirements reflect DMR's intention to include members who have special expertise or experience with regard to providing or receiving services for mentally retarded individuals, while eliminating opportunities for influence by DMR.

Although DMR exercises very little control over the HRCs' decision-making, all of the tasks and responsibilities that the HRCs have are assigned to them by DMR. In its guidelines for HRC minutes, DMR states that it has "delegated significant responsibilities" to the HRCs. The HRCs must hold quarterly meetings and must report to DMR about their actions by keeping minutes and filing them with the DMR area office director and the Human Rights Specialist from DMR's Office for Human Rights.<sup>31</sup> The HRCs receive training from, and have access to guidance from, the Office for Human Rights, which gives the Office for Human Rights opportunities to recommend ways for the HRCs to proceed. The HRCs review reports and plans that DMR regulations require providers to submit to them, and they have a role in an investigation process that is governed by DMR regulations. The members of each HRC develop their own operating rules and procedures, and they exercise independent judgment about the matters they consider, but DMR determines the types of matters they have authority to consider, establishes the procedures by which they are given matters to decide, and supplies the standards that govern their decisions. The HRCs speak with their own voice, but they do DMR's work.

On balance, our conclusions that the HRCs were created by DMR by regulation and that they serve an essential governmental function support a finding that the HRCs are governmental instrumentalities. In addition, we find that the HRCs' exercise of independent judgment and their loyalty to individuals served by DMR are consistent with the policing role that DMR has assigned to them. DMR has determined that it can best accomplish its goal of enforcing human rights standards by incorporating into its procedures the use of HRCs who provide independent oversight. We find that the HRCs that serve state-operated facilities are instrumentalities within DMR, and therefore, state agencies.<sup>32</sup> Consequently, their members are special state employees.

For the following reasons, the conclusions we have reached with regard to HRCs that oversee state-operated facilities also apply to HRCs for private providers. The key difference between the two is that Executive Directors of private non-profit organizations select the members of the HRCs for private providers, and DMR has no authority to remove their members. They also use government staff less than those that serve state-operated facilities -- the human rights coordinator who provides administrative support is employed by the private provider, not DMR -- and the personnel whom they monitor work for private employers, not the government. Their tasks, however, are the same. They, too, perform the tasks within the context of DMR procedures and report to DMR about their progress. By regulation, only one member of an HRC for a private provider may have any financial or administrative interest in DMR,<sup>33</sup> so DMR has virtually the same lack of influence over these HRCs' decisions. Regardless of whether they oversee state-operated or private providers, all HRCs were created by regulation and serve an essential governmental function by performing a key oversight and advocacy role in DMR processes designed to protect human rights.

## **CONCLUSION**

We recognize that our conclusion that the HRCs are instrumentalities within DMR may be onerous for some of its members, and may prohibit others from serving. There are nearly as many HRCs as there are providers and placement agencies for mentally retarded individuals.

These HRCs include mentally retarded individuals, or parents, guardians or advocates for such individuals who either receive care themselves or serve because their immediate family members or clients receive care. The composition of the HRCs indicates that DMR expects their members to have a strong personal investment in the issues. In all likelihood, members will be chosen and will be willing to serve precisely because they have the types of interests which, under the conflict of interest law, are recognized as conflicts. On an ongoing basis, engaging in the complex analysis of the factual situations that come before the HRCs in order to determine whether abstention or a disclosure required by c. 268A is necessary under the circumstances may be impossible for some members and for others could drastically interfere with the ability of the HRCs to accomplish their tasks. To the extent that the requirements of the conflict of interest statute may present fundamental practical obstacles to the orderly functioning of the HRCs, it may be advisable to consider seeking a legislative solution.

**DATE AUTHORIZED: December 13, 2006**

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\*All identifying information has been deleted from this opinion as required by G.L. c. 268B, § 3(g).

<sup>1</sup> M.G.L. c. 19B, §§ 1, 15.

<sup>2</sup> M.G.L. c. 123B, § 2, M.G.L. c. 19B, § 14.

<sup>3</sup> M.G.L. c. 19B, § 12.

<sup>4</sup> M.G.L. c. 19B, 17; M.G.L. c. 123B, §§ 3, 8, 9.

<sup>5</sup> 115 C.M.R. §§ 5.01, 5.03.

<sup>6</sup> 115 C.M.R. § 5:01.

<sup>7</sup> In particular, one case, *Wyatt v. Stickney*, 344 F. Supp. 387 (D. Ala. 1972), had ordered the creation of such committees as part of a remedial scheme designed to address constitutionally impermissible conditions for mentally retarded residents of a state school and hospital in Alabama. The stated purpose of the human rights committee in *Wyatt* was to "review... all research proposals and all habilitation programs to ensure that the dignity and human rights of residents are preserved." *Id.* at 392. The language in this case formed the basis for DMR's creation of HRCs.

<sup>8</sup> 115 C.M.R. § 3.09. The information about HRCs that follows comes from the request for advice and from the following statutory and regulatory provisions:

(a) 115 C.M.R. § 3.09 about the membership, duties and procedures of HRCs,

(b) 115 C.M.R. § 4.06 with respect to HRCs' access to individuals' private records,

(c) M.G.L. c. 123B, § 8 and 115 C.M.R. § 5.11(6) , (7) and (8) with respect to reporting requirements and HRC responsibilities with regard to use of restraints,

(d) 115 C.M.R. § 5.14 with respect to review of the use of behavior modification,

(e) 115 C.M.R. §9:16(9) with respect to reports of harm or mistreatment,

(f) 115 C.M.R. §§ 9.06, 9:10(3)(a)(3) and 9.12 with respect to HRCs' role in DMR investigations.

<sup>9</sup> 115 C.M.R. § 3:09(c).

<sup>10</sup> 115 C.M.R. § 5:14(1)(c).

<sup>11</sup> *Id.*

<sup>12</sup> 115 C.M.R. § 3:09(1)(b)(1); see also 115 C.M.R. § 5.14(4)(d)(3).

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<sup>13</sup> “State employee,” a person performing services for or holding an office, position, employment, or membership in a state agency, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation, on a full, regular, part-time, intermittent or consultant basis, including members of the general court and executive council. G.L. c. 268A, § 1(q).

<sup>14</sup> “Special state employee,” a state employee:

- (1) who is performing services or holding an office, position, employment or membership for which no compensation is provided, or
- (2) who is not an elected official and
  - (a) occupies a position which, by its classification in the state agency involved or by the terms of the contract or conditions of employment, permits personal or private employment during normal working hours, provided that disclosure of such classification or permission is filed in writing with the state ethics commission prior to the commencement of any personal or private employment, or
  - (b) in fact does not earn compensation as a state employee for an aggregate of more than eight hundred hours during the preceding three hundred and sixty-five days. For this purpose compensation by the day shall be considered as equivalent to compensation for seven hours per day. A special state employee shall be in such a status on days for which he is not compensated as well as on days on which he earns compensation. G.L. c. 268A, § 1(o).

<sup>15</sup> G.L. c. 268A, § 1(p).

<sup>16</sup> *McMann v. State Ethics Commission*, 32 Mass. App. Ct. 421, 425 (1992).

<sup>17</sup> *In re Paul Pathiakis*, 2004 SEC 1167, 1172-1173; EC-COI-00-2.

<sup>18</sup> *MBTA Retirement Board v. State Ethics Commission*, 414 Mass. 582, 588-589 (1983).

<sup>19</sup> See, e.g., EC-COI-00-2; 95-10.

<sup>20</sup> EC-COI-00-3; 00-02; 95-10 & n.10; 88-19.

<sup>21</sup> EC-COI-00-3; 95-10, n. 10. In another context, where taxation depended on whether or not services by state employees were “rendered in connection with the exercise of an essential governmental function,” the First Circuit opined that the term meant “police powers exercised solely to promote the public safety, health, morality or the general welfare which is recognized as a governmental function of every state, and essential to promote the happiness and wellbeing of all of its citizens.” *Commissioner of Internal Revenue v. Sherman*, 69 F.2d 755, 756 (1<sup>st</sup> Cir. 1934). The court further distinguished between “those operations of the states essential to the execution of its governmental functions, and which the state can only do itself, and those activities which are of a private character.” *Id.*, quoting *Flint v. Stone Tracy Co.*, 220 U.S. 107, 172, 31 S.Ct. 342, 357, 55 L.Ed. 389 (1910).

<sup>22</sup> See *Addington v. Texas*, 441 U.S. 418, 426, 60 L.Ed. 323 (1979).

<sup>23</sup> See, e.g., *Wyatt*, *supra*, 344 F. Supp. at 390.

<sup>24</sup> See *Brewster v. Dukakis*, 520 F. Supp. 882, 890 (D. Mass. 1981).

<sup>25</sup> In the absence of any viable private alternative, for example, the First Circuit determined that it was appropriate for the Commonwealth of Massachusetts to design and fund a system to provide legal advocacy for mentally retarded and mentally ill individuals in the western third of Massachusetts. See *Brewster*, 520 F. Supp. 882, 891-892 (D. Mass. 1981). Other examples of state agencies that provide advocacy services include the Mental Health Legal Advisors Committee, a committee of fourteen judges and attorneys appointed by the Supreme Judicial Court who provide legal representation and participate in legislative and state and federal administrative processes to protect the legal rights of mentally ill and mentally retarded persons in the Commonwealth, and the Disabled Persons Protection Commission, an independent state agency which investigates abuse of persons with disabilities in the Commonwealth. G.L. c. 221, § 34e; G.L. c. 19C, § 1 et seq.

<sup>26</sup> Regarding membership, factors indicating governmental control include selection of members of a board by governmental personnel and discretion by governmental personnel to remove members or determine the duration of their service. See EC-COI-00-3; 00-2. A requirement that a board include government-affiliated members, or the presence on a board of a majority of government-affiliated members or members whose interests are closely aligned



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with those of a governmental agency, also demonstrate governmental control. *EC-COI-00-3; 00-2; 95-1; 94-7; 91-12; 89-24*. Another indication is a voting requirement that gives a government-affiliated minority the ability to control decision-making. *EC-COI 89-1*.

<sup>27</sup> The Commission considers the degree of direction imposed by governmental officials, the extent to which governmental approval is required for a board's activities to go forward, and the degree of discretion that a board has in conducting its activities. *EC-COI-00-3; 00-2; 95-10; 89-24; 89-1; 88-24; 88-19*. Use of governmental staff and facilities in its operations is also a factor. *EC-COI-88-19*.

<sup>28</sup> *EC-COI-00-2* (primary loyalty of Town Retirement Board members was to their members and beneficiaries); *EC-COI-94-7* (board members of Home Care Corporations, who were appointed by local Councils on Aging, did not owe their primary loyalty to the Executive Office of Elder Affairs, with which Home Care Corporations had a contract).

<sup>29</sup> *Black's Law Dictionary* (7<sup>th</sup> Ed. 1999). See *EC-COI-04-01* (interpreting G.L. c. 268A, § 15A).

<sup>30</sup> *Webster's Third New International Dictionary* (1993). An additional definition is: "To coordinate, direct and inspect continuously and at first hand the accomplishment of; oversee with the powers of direction and decision the implementation of one's own and another's intentions." *Id.*

<sup>31</sup> Cf. *EC-COI-95-1* (the fact that the board of a community access cable corporation was not required to report to the mayor was one indication of a lack of governmental control and supervision).

<sup>32</sup> Our findings that DMR does not control an HRC's decision-making and that an HRC exercises independent judgment are not contradictory to our finding that an HRC is an "instrumentality within" DMR, since the definition of "instrumentality" includes not only the concept of acting at the control and direction of another, but also, alternatively, the concept of being a means to achieve another's ends. The conflict of interest statute itself acknowledges that independence is not inherently incompatible with the concept of "instrumentality", since its definition of "state agency" includes "any independent ...instrumentality". G.L. c. 268A, § 1(p).

<sup>33</sup> 115 C.M.R. § 3:09(1)(c).